



PATENT
177079-00058

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of : Phyllis Leithem et al.
Serial No. : 09/863,585
Filed : May 16, 2001
Title : ABSORBENT PRODUCTS AND
METHODS OF PREPARATION
THEREOF
Group Art Unit : 1731
Examiner : Unassigned

**CERTIFICATE OF EXPRESS
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I hereby certify that this correspondence,
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Name: Maria Carrido

Signature: Phyllis Leithem

Assistant Commissioner For Patents
Washington, D.C. 20231

**37 CFR § 1.607(a)
REQUEST BY APPLICANTS FOR INTERFERENCE WITH PATENT**

S I R:

Applicants seek an interference between the present application and an unexpired patent. The claims to be placed in interference are directed to personal hygiene articles with an absorbent core comprising specially treated wood fiber. In general, the invention relates to the discovery that it is advantageous to make the absorbent core of a personal hygiene article from wood fiber that is treated with a pH basic solution at relatively low temperatures and fluffed. Applicants disclosed this invention in the great grandparent of the present application, which was filed in January of 1994. The inventors of the issued patent filed the parent application of their patent a year and a half later, in July of 1995. Applicants respectfully request that an interference be declared and that applicants be declared the senior party.

This request for interference is related to a request for interference filed by applicants in Serial No. 09/334,125, which is the parent of the present application.

The requirements of 37 CFR § 1.607(a) are satisfied as follows:

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I. 37 CFR § 1.607(a)(1)

Applicants seek the declaration of an interference between the present application (“Leithem ‘585 application”) and U.S. Patent 6,063,982 to Martin et al. (“Martin ‘982 patent”). A copy of the Martin ‘982 patent is attached as “Exhibit A”.

II. 37 CFR § 1.607(a)(2)

Applicants present the following Proposed Count 1:

Claims 1, 6 or 11 of the Martin ‘982 patent

OR

Claim 104 of the Leithem ‘585 application.

Proposed Count 1 is a bifurcated count that includes as count alternatives the respective independent claims of the Martin ‘982 patent and the present application. For the convenience of the Examiner, a proposed form PTO-850 is attached as “Exhibit B”. For the Examiner’s convenience in filling out form PTO-850, a copy of Proposed Count 1 with a recital of the four alternative count claims is attached as “Exhibit C”. A claim chart showing the correspondence between claim 1 of the Martin ‘982 patent and claim 104 of the Leithem ‘585 application is attached as “Exhibit D”. As shown in Exhibit D, an interference is needed to resolve the priority of invention.

III. 37 CFR § 1.607(a)(3)

Claims 1-15 of the Martin ‘982 patent are identified as corresponding to Proposed Count 1. These are all of the claims of the Martin ‘982 patent.

IV. 37 CFR § 1.607(a)(4)

Claim 104 of the present application (the Leithem ‘585 application) is identified as corresponding to Proposed Count 1. This is the only claim now pending in the present application. A clean copy of this claim is attached as “Exhibit F”.

A. Claims 1-15 of the Martin '982 Patent
Correspond to Proposed Count 1

Claims 1, 6 and 11 of the Martin '982 patent correspond exactly to Proposed Count 1. Claims 2-5, 7-10 and 12-15 of the Martin '982 patent also correspond to Proposed Count 1 because: a) each of claims 2-5, 7-10 and 12-15 depends from a claim that corresponds exactly to Proposed Count 1, and b) the additional limitations defined by claims 2-5, 7-10 and 12-15 do not make not any of those claims separately patentable. In this regard, it is noted that claims 4, 9 and 14 of the Martin '982 patent limit the strike-through acquisition re-wet weight of the sublayer material to "less than about 40 grams." Limiting the re-wet weight to less than about 40 grams is not a patentable distinction because the Martin '982 patent reports that even untreated pulp had a re-wet weight of "38.0" grams. Martin '982 patent, Table 3, col. 9, line 56.

B. Claim 104 of the Leithem '585
Application Corresponds to Proposed Count 1

Claim 104 of the Leithem '585 application corresponds exactly to Proposed Count 1.

V. 37 CFR § 1.607(a)(5)

The terms of the claim of the present application that are identified as corresponding to Proposed Count 1 (claim 104 of the Leithem '585 application) are applied to the disclosure of the present application as follows:

Claim 104 Leithem '585 Application	Application of the Terms of the Claim to the Specification of the Leithem '585 Application
An absorbent personal hygiene device comprising:	p. 1 ("absorbent products of household and hygienic uses such as diapers, incontinence and catamenial devices")
a layer that allows liquid to pass,	p. 2 ("[a]n 'acquisition' layer of proper characteristics and properties allows the liquid to pass quickly into the absorbent core"); or Figure 2, Item 11 (p. 6, "Item 11 is a thermally-bonded polypropylene coversheet, it is typically carded or spun.")
a water barrier sheet,	p. 7 ("The water barrier, which is a polyethylene sheet has been shown as 16.")
an absorbent core interposed between said layer and said sheet,	Figure 2 (see, item 14 interposed between items 11, 12 and 16); p. 6 ("Item 12 is an airlaid cellulose acquisition layer."); p. 7 ("the absorbent core is identified as 14"); p. 7 ("The water barrier, which is a polyethylene sheet has been shown as 16.")
the absorbent core containing at least about 25% of fluffed wood fiber pulp, wherein said fluffed wood fiber pulp comprises wood fiber pulp that has been:	p. 14 ("converted by the end-user from the dried, sheeted pulp to a pad of 'fluffed' fibers by mechanical action"); p. 1 ("to produce cellulosic pulps having altered and novel fiber properties desirable for end-use applications for absorbent and fluff pulp products") p. 6 ("the improved properties are obtained regardless of the wood species which have been employed") p.7 ("from about 100% to about 25%")
cold caustic extracted and	p. 5 ("cold caustic treatment of the pulp/fibers")
fluffed by mechanical action.	p. 14 ("converted by the end-user from the dried, sheeted pulp to a pad of 'fluffed' fibers by mechanical action")

VI. 37 CFR § 1.607(a)(6)

37 CFR § 1.607(a)(6) is satisfied because, prior to the expiration of the one year period following the issue of the Martin '982 patent, at least one of the claims of the present application was for "substantially the same subject matter" as at least one claim of the Martin '982 patent. In particular, the Martin '982 patent issued on May 16, 2000 and claim 104 of the Leithem '585 application was added in a Preliminary Amendment filed on May 16, 2001¹. Claim 112 of the

¹ Under 35 U.S.C. § 135(b), a patent's one year anniversary date is "prior to one year from the date on which the patent was granted. M.P.E.P. § 2307, p. 2300-13 (July 1998).

Leithem '585 application depends from claim 104 and was also added in the Preliminary Amendment of May 16, 2001. Claim 112, as presented in that Preliminary Amendment, is compared to claim 1 of the Martin '982 patent in "Exhibit G". As shown in Exhibit G, the claim 112 that was presented in the May 16, 2001 Preliminary Amendment contains all of the material limitations of claim 1 of the Martin '982 patent.

**VII. Request For The Benefit Of The Filing
Dates Of Applicants' Priority Applications**

Applicants claim priority under 35 U.S.C. § 120 based on U.S.S.N. 09/334,125 ("Leithem '125 application"), filed June 15, 1999, U.S.S.N. 08/370,571 ("Leithem '571 application"), filed January 18, 1995, and U.S.S.N. 08/184,377 ("Leithem '377 application"), filed January 21, 1994, now abandoned.

Because the present application shares the same specification as the Leithem '125 and '571 applications, claim 104 of the present application is also supported by the Leithem '125 and '571 applications (see, Section V, supra). Thus, if an interference is declared based on Proposed Count 1, applicants will be entitled to at least the January 18, 1995 filing date of the Leithem '571 application. Because this date is before the September 5, 1997 filing date of the Martin '982 patent and the July 6, 1995 filing date of its parent, U.S. Patent 5,766,159 ("Martin '159 patent"), applicants should be declared the senior party.

Applicants are also entitled to the January 21, 1994 filing date of the Leithem '377 application because claim 104 of the Leithem '585 application (which is included in Proposed Count 1) reads on at least one embodiment disclosed in the Leithem '377 application:

Claim 104 Leithem '585 Application	Embodiment of the Terms of the Claim In the Specification of the Leithem '377 Application
An absorbent personal hygiene device comprising:	p. 1 ("use of modified pulps for absorbent products of household and hygienic uses such as diapers, incontinence and catamenial devices")
a layer that allows liquid to pass,	p. 2 ("[a]n 'acquisition' layer of proper characteristics and properties allows the liquid to pass quickly into the absorbent core")
a water barrier sheet,	p. 7 ("The water barrier, which is a polyethylene sheet has been shown as 16."); or Figure 2, Item 11 (p. 7, "Item 11 is a thermally-bonded polypropylene coversheet, it is typically carded or spun.")
an absorbent core interposed between said layer and said sheet,	Figure 2 (<u>see</u> , item 14 interposed between items 11, 12 and 16); p. 7 ("Item 12 is an airlaid cellulose acquisition layer."); p. 7 ("the absorbent core is identified as 14"); p. 7 ("The water barrier, which is a polyethylene sheet has been shown as 16.")
the absorbent core containing at least about 25% of fluffed wood fiber pulp, wherein said fluffed wood fiber pulp comprises wood fiber pulp that has been:	p. 15 ("cold caustic treatment . . . is novel with respect to . . . absorbent core materials"); p. 26 ("[t]he absorbent core is a mixture of cellulose fiber, fluffed and air laid") p. 7 ("from 100% to about 25%")
cold caustic extracted and	p. 4 ("cold caustic extraction (CCE) of pulps such as preferably obtained from coniferous and deciduous trees result in fibers that have advantageously and unexpectedly improved absorption properties")
fluffed by mechanical action.	p. 26 ("fluffed")

VIII. 37 CFR § 1.608

37 CFR § 1.608 is not applicable because the effective filing date of the present application (which is at least as early as the January 18, 1995 filing date of the Leithem '571 application) precedes the September 5, 1997 filing date of the Martin '982 patent and the July 6, 1995 filing date of its parent, the Martin '159 patent.

IX. Proposed Form PTO-850

For the convenience of the Examiner, a proposed form PTO-850 is attached as
"Exhibit B".

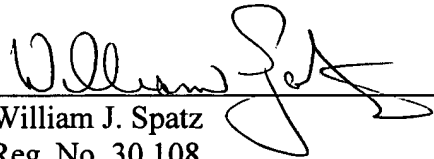
* * *

Should any questions arise, the Examiner is invited to telephone the attorneys for
applicants at 212-715-9257 (William J. Spatz, Reg. No. 30,108) or 212-715-9472 (Louis H.
Weinstein, Reg. No. 45,205).

Respectfully submitted,

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By:



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August 27, 2001